

RECORDING COVER SHEET (Please Print or Type)

This cover sheet was prepared by the person presenting the instrument for recording. The information on this sheet is a reflection of the attached instrument and was added for the purpose of meeting first page recording requirements in the State of Oregon, ORS 205.234, and does NOT affect the instrument.

*THIS SPACE RESERVED FOR USE BY
THE COUNTY RECORDING OFFICE*

AFTER RECORDING RETURN TO:

City of Stayton
Attn: Alissa Angelo
362 N. Third Avenue
Stayton, OR 97383

1) TITLE(S) OF THE TRANSACTION(S) ORS 205.234(a)

Developer-City Construction Agreement

2) DIRECT PARTY / GRANTOR(S) ORS 205.125(1)(b) and 205.160

City of Stayton
362 N. Third Avenue
Stayton, OR 97383

3) INDIRECT PARTY / GRANTEE(S) ORS 205.125(1)(a) and 205.160

JCNW Family LLC
15556 Coon Hollow Rd SE
Stayton, OR 97383

4) TRUE AND ACTUAL CONSIDERATION
ORS 93.030(5) – Amount in dollars or other

\$ _____ ☐ Other

5) SEND TAX STATEMENTS TO:

N/A

6) SATISFACTION of ORDER or WARRANT
ORS 205.125(1)(e)

CHECK ONE: ☐ FULL
(If applicable) ☐ PARTIAL

**7) The amount of the monetary
obligation imposed by the order
or warrant. ORS 205.125(1)(c)**

\$ _____

**8) If this instrument is being Re-Recorded, complete the following statement, in
accordance with ORS 205.244: "RERECORDED AT THE REQUEST OF _____**

TO CORRECT _____

PREVIOUSLY RECORDED IN BOOK _____ AND PAGE _____, OR AS FEE
NUMBER _____."

DEVELOPER-CITY CONSTRUCTION AGREEMENT

THIS AGREEMENT, made and entered into this 6th day of June, 2013, by and between the **City of Stayton**, a municipal corporation, hereinafter called the "**CITY**" and **JCNW Family LLC**, hereinafter called the "**DEVELOPER**;"

*** W I T N E S S E T H ***

WHEREAS, the CITY Planning Commission has granted approval to the preliminary plat for **Phillips Subdivision**, hereinafter called "the **DEVELOPMENT**," with the understanding that the **DEVELOPER** agrees to comply with all planning conditions contained therein, subject to any modifications or revisions approved by the CITY Planning Commission; and

WHEREAS, the **DEVELOPER** has elected to divide construction of the **DEVELOPMENT** into Phases I, and II, in accordance with Construction Plans prepared by Westech Engineering; and

WHEREAS, the City Engineer approved the Construction Plans for Phase I in August, 2008 and authorized construction of Phase I, but did not authorize construction of Phase II until a Development Agreement was executed by the CITY and **DEVELOPER**; and

WHEREAS, the **DEVELOPER** has completed Phase I of the **DEVELOPMENT**, the CITY has approved the public improvements, and the plat for Phase I has been recorded; and

WHEREAS, in March 2013 the **DEVELOPER** applied to the CITY Planning Commission for modification of one of the conditions of approval to allow for the development of Phase II and the potential for a Phase III as shown on the Construction Plans; and

WHEREAS, upon Planning Commission approval of the proposed modifications, the CITY will grant approval for construction of public works improvements consistent with the conditions contained within said CITY approval; and

After Recording Return To:
City of Stayton
362 N. Third Ave
Stayton, OR 97383

Mail Tax Statements to:
Not Applicable

WHEREAS, What was originally proposed as Phase III, is a future phase of the development, which will be identified in bulk as Tract A on the plat for Phase II. Except as otherwise provided for herein, the terms and conditions, for development of Tract A will be under a separate Development Agreement to be negotiated at the time Tract A is proposed to be replatted into Phase III, and after all land use approvals necessary for said replatting are obtained;

NOW THEREFORE, the DEVELOPER and the CITY agree to the following conditions for completion of this development to wit:

1. The DEVELOPER agrees that all improvements shall be constructed in accordance with the land use approvals and the construction plans approved by the CITY, with conditions as outlined in the CITY approvals, unless the project, or any part thereof, has been modified or amended by application to and approval by the City, in which case current regulations and standards shall be applicable to the amendments to the plans for the project.
2. The DEVELOPER agrees that it shall complete, or cause to be completed all required public improvements and conditions of approval for Phases I and II within 24 months of the date of this agreement. If the said improvements and conditions of approval are not completed as specified above, all approvals shall become null and void.
3. The DEVELOPER agrees that all improvements shall be done in compliance with all applicable statutes, codes, ordinances and standards and conditions of approval, including but not limited to the CITY's Public Works Standards, which include the Public Works Design Standards (PWDS), the Public Works Standard Construction Specifications (PWSCS), the Standard Drawings, and the CITY subdivision and development ordinances in place at the time of approval of the plans, or any modifications thereto. The DEVELOPER certifies that copies of the CITY's Public Works Standards have been obtained by the DEVELOPER or his representative, and will be available for reference by the contractor constructing the project.
4. It is agreed that the DEVELOPER is making certain public works improvements with the result that the CITY will accept said improvements as part of the CITY's public works facilities after the DEVELOPER completes the improvements to the satisfaction of the City Engineer. Final acceptance of the public works improvements shall not occur until the completion of the warranty period and satisfaction of the acceptance policies of the CITY. In accordance with Section 108.21 of the PWSCS, the warranty period shall be 1 year from provisional acceptance of the public works improvements by the CITY.
5. The DEVELOPER shall cause his engineer to provide all surveying services necessary to stake the project prior to and during construction and to provide all inspection services as required by Section 102.09 of the PWSCS and as necessary to complete the work.
6. The DEVELOPER shall cause his engineer to prepare record drawings when the project is complete as required by Section 102.11 of the PWSCS.
7. The DEVELOPER hereby designates the person named on the last page of this agreement as the DEVELOPER's engineer as referenced above and in the PWSCS.
8. The DEVELOPER shall, after satisfactorily completing the conditions set forth herein, provide the CITY a warranty bond or other mutually agreed security valued at a minimum of 30 percent of the construction bond in accordance with Section 102.05 of the PWSCS. The warranty period for the public works improvements shall not commence until acceptable record drawings and said warranty bond or other mutually agreed

security is provided to the CITY, and the period of the warranty shall be for the full warranty period.

9. It is agreed between the CITY and the DEVELOPER that no building permits for any structures within each phase of the development will be issued until all required improvements have been constructed and all planning, engineering and public works conditions of approval have been met by the DEVELOPER and accepted by the CITY, including submittal of warranty bonds or other mutually agreed security and record drawings, unless approved by the City Administrator.
10. If the DEVELOPER desires to record the final plat before all required improvements have been constructed and all planning, engineering and public works conditions of approval have been met by the DEVELOPER and accepted by the CITY, the DEVELOPER shall provide a security guarantee satisfactory to the City Administrator that all improvements will be constructed in conformance with all CITY standards and ordinances, all conditions of approval will be satisfied, and all necessary easements have been obtained and rights-of-way have been dedicated. There shall be an easement granted in the final plat for Phase II from the DEVELOPER to the CITY over the entirety of Tract A (formerly identified as Phase III) for the discharge, retention, detention and accumulation of stormwater from all CITY sources onto Tract A, with such stormwater being managed by DEVELOPER, at its expense in accordance with CITY standards and regulations, and with CITY approval of such management systems.
11. If the final plat is recorded before all required improvements have been constructed and all planning, engineering and public works conditions of approval have been met by the DEVELOPER and accepted by the CITY, this DEVELOPER-CITY Construction Agreement shall be recorded in the deed records of Marion County by the DEVELOPER and referenced on the face of the final plat.
12. Reimbursements:
 - a. WATER: DEVELOPER will install a 10" Water Main in Junco St. as part of Phase II of the DEVELOPMENT. The CITY has determined that the 10" water main is a "Qualified Public Improvement" under SMC Chapter 13.12, and the portion of the cost of the oversizing from an 8" water main to a 10" water main is eligible for SDC reimbursement by CITY to DEVELOPER. CITY agrees to reimburse DEVELOPER for the actual length of 10" water main installed in Junco St. on a lineal foot basis. Reimbursement in the amount of \$18,200.00 will be paid by CITY to DEVELOPER in accordance with the information and calculations attached hereto as Exhibit A, within 90 days of final completion of construction and acceptance by the CITY.
 - b. SEWER: Sanitary sewer shall be re-designed in Phase II at the sole cost and expense of the DEVELOPER. DEVELOPER will submit new plan sheets for the Oriole Street sanitary sewer line including a proposal showing any lots to be served by individual grinder pumps.
 - c. STREETS: DEVELOPER shall construct Junco Street, from Kindle Way to the west end of Phase II (910' +/-), as a 17' wide street built to Collector Street design standards, and shall provide full pavement (to final lift) thereon. A credit from the DEVELOPER against amounts owed herein by the CITY is granted in the amount of \$19,840.00 in accordance with the information and calculations attached hereto as Exhibit B. The credit shall be applied at the time payment is due by the CITY for reimbursements to be paid herein.

The conditions of approval for the entire subdivision required the construction of Junco Street as a 24' wide street built to Collector Street design standards from Kindle Way to the west end of the subdivision. At the time Tract A in Phase II is replatted to become Phase III, DEVELOPER shall

widen Junco Street adjacent to Phases I and II from a 17' wide street to a 24' wide street built to Collector Street design standards. The details of this requirement are to be included in the development agreement to be adopted during the replatting of Tract A into Phase III.

DEVELOPER shall provide an 8' wide slope easement from the adjoining property along the entire northern boundary of Phase I and II of the development in order to protect Junco Street and to make it a safer travel way. In the alternative, DEVELOPER may provide a retaining wall on the subject property along the northern boundary of Phase I and II of the development, provided the proposed retaining wall design and location is approved in advance by the CITY.

- d. STORM SEWERS: DEVELOPER will install the following storm drainage improvements in conjunction with Phase II of the DEVELOPMENT:

- 1) 507 lf 30" storm sewer pipe – Phase II on-site
- 2) 2 60" manholes
- 3) Tract A - On-site storm detention/retention basin and outfall structure

The CITY has determined that the 30" storm sewers in Phase II are oversized and are listed in the Stayton Stormwater Master Plan (Keller Associates, 2009) and are "Qualified Public Improvements" under SMC Chapter 13.12 and the portion of the cost of the oversizing of these storm drainage facilities is eligible for reimbursement by CITY to DEVELOPER.

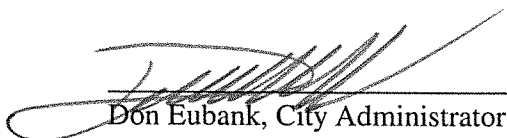
Reimbursement in the amount of \$34,905.00 will be paid by the CITY to DEVELOPER in accordance with the information and calculations attached hereto as Exhibit C, within 90 days of final completion of construction and acceptance by the CITY.


13. The CITY's responsibility for financing/construction of public works facilities under this Agreement as to Phase II of the proposed development is directly dependent upon DEVELOPER's actually constructing Phase II. Should DEVELOPER elect not to construct Phase II, the CITY is relieved of all financial/construction responsibilities related thereto. To the extent the CITY has expended resources during the construction of a phase that only were expended because of the planned construction by DEVELOPER of subsequent unconstructed phase, DEVELOPER shall reimburse CITY for all such expenditures.
14. CITY's obligation to reimburse DEVELOPER for any public improvement referenced in this AGREEMENT will terminate if the public improvement is not completed and accepted by CITY within two (2) years of the date of this AGREEMENT, or as otherwise specified herein.
15. The DEVELOPER will submit revised construction plans for Phases II, which plans will identify as Tract A, what was previously identified as Phase III, in compliance with this Agreement, for approval by the CITY ENGINEER. These revised construction plans will include additional plan sheets, profiles and details listed in Exhibit D.
16. It is further agreed that any amendments to this agreement or any assignments of responsibilities contained herein shall not be valid without the written consent of the CITY.
17. This agreement shall be binding on any assigns or successors in interest of the DEVELOPMENT.
18. This agreement shall be recorded in the Marion County Deed Records.

19. This Agreement shall only be effective after all land use approvals that are a prerequisite to construction of the public works facilities involved herein, have been granted, and all appeal periods have passed without an appeal. In the event of an appeal of any required land use approval, this Agreement shall not become effective until such appeal or appeals are resolved and final land use approvals are entered which are no longer subject to any land use appeal.
20. This agreement shall be in full force and effect until said public works improvements are complete and final acceptance in writing is given by the CITY.
21. Except for acts of third parties or the DEVELOPER, the CITY shall indemnify, defend and hold DEVELOPER harmless from and against all claims, liens, causes of action, losses, costs, expenses and liabilities arising from the CITY'S acts related to the flow of storm water from the storm water outfall located on DEVELOPER'S property.
22. Any dispute or claim that arises out of or that relates to this agreement, or to the interpretation or breach thereof, shall be resolved by arbitration in accordance with the then effective arbitration rules of Arbitration Service of Portland, Inc. or the American Arbitration Association, whichever organization is selected by the party who first initiates arbitration by filing a claim in accordance with the filing rules of the organization selected, and judgment upon the award rendered pursuant to such arbitration may be entered in a Marion County court having jurisdiction thereof. The owner, the contractor, and all subcontractors, material suppliers, engineers, architects, designers, construction lenders, bonding companies, and all other parties concerned with or involved in the performance of the contract are bound, each to the other, by this arbitration clause, provided such party has signed this contract, or has signed a contract that incorporates this contract by reference, or signs any other agreement to be bound by this arbitration clause. This arbitration clause shall not preclude any party from filing a statutory construction lien or from commencing suit to foreclose such lien, but the foreclosure suit shall be stayed until the rendering of the arbitration award, which award shall be binding in such foreclosure suit as to all matters determined in arbitration, and the lien may then be foreclosed to the extent permitted by law. The parties acknowledge that mediation usually helps parties to themselves settle their dispute. Therefore, any party may propose mediation whenever appropriate through one of the above named organizations or any other mediation process or mediator as the parties may agree upon. Any mediation or arbitration proceedings shall be conducted in Marion County, Oregon.
23. The parties hereto agree that should any suit or action be filed to enforce the terms of this Agreement or any breach thereof, the losing party agrees to pay the prevailing party's reasonable attorney fees in an amount to be set by the court, including costs, disbursements and any such attorney fees associated with any appeal therefrom.

IN WITNESS THEREOF, the City of Stayton has caused this agreement to be signed by its CITY Administrator and Mayor, and the DEVELOPER has caused this agreement to be signed, sealed and notarized the same as the date and year first above written.

CITY OF STAYTON, OREGON


Don Eubank, City Administrator


Scott Vigil, Mayor

JCNW FAMILY LLC. "DEVELOPER"

By: Bill Martinak
Managing Member

STATE OF OREGON)
) ss.
County of Marion)

On this 21st day of May, 2013 personally appeared before me, the above named person who being duly sworn, did say that he is the Managing Member of, JCNW Family LLC. an Oregon Limited Liability Company, and that said Agreement was signed on behalf of said LLC, and with the authority of its members; and he acknowledged said document to be its voluntary act and deed.



Patricia L. Perrin
Notary Public for Oregon

IN WITNESS THEREOF, the person designated below is the Developer's engineer and acknowledges that he has been retained to provide engineering and inspection services as required by the CITY's Public Works Standards and in accordance with this agreement.

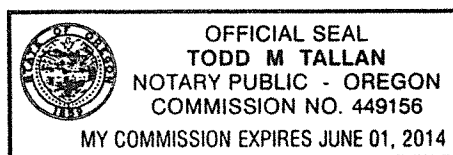
Dated this 21st day of MAY, 2013

Name of Firm: Westech Engineering, Inc., 3841 Fairview Industrial Drive SE, Salem, Oregon 97302

Signature: By: [Signature]
Steve Ward, Oregon Registered Professional Engineer

STATE OF OREGON)
) ss.
County of Marion)

On this 21st day of May, 2013, personally appeared before me, the above named Steve Ward, known to be to be the person whose signature is above subscribed, and acknowledged to me that this is a free act and deed, for the uses and purposes therein expressed. In testimony whereof, I have hereunto set my hand and affixed by official seal on the day and year last above written.



Todd M. Tallan
Notary Public for Oregon

INCORPORATED EXHIBITS

Exhibit A Water
Exhibit B Streets
Exhibit C Stormwater
Exhibit D Additional Plan Sheets Needed

Approved as to form:

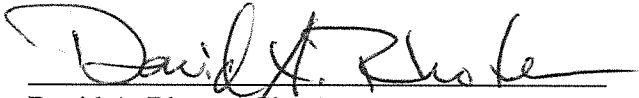

David A. Rhoten, City Attorney

Exhibit A - Water Phillips Subdivision - Qualified Public Improvements

Methodology:

Phase II waterlines only. The Developer is required to provide an 8" waterline to serve the Development per the Public Works Standards. The Developer is providing 10" waterlines per the Water Master Plan. The difference in the cost between the required 8" waterline and the provided 10" waterline will be reimbursed by the City to the Developer.

Item	Description	Quantity	Unit	Unit Price	Total Price	Proposed Share	Proposed City Cost	Proposed Developer Cost	Comments/Assumptions
Phase II Water									
1	8" to 10" DI Water	640	LF	\$ 25.00	\$ 16,000.00	100 / 0	\$ 16,000.00	\$ -	Unit price cost difference
2	8" to 10" Gave Valve	2	EA	\$ 1,100.00	\$ 2,200.00	100 / 0	\$ 2,200.00	\$ -	Unit price cost difference
	Phase II Water Subtotal				\$ 18,200.00		\$ 18,200.00	\$ -	Phase II Reimbursement
Water Total							\$ 18,200.00	Reimbursement to Developer	

Unit costs based on Developer's proposed reimbursement cost estimate provided to the City on March 4, 2013.

Exhibit B - Streets

Phillips Subdivision - Qualified Public Improvements

24' Two-thirds Width Street vs. 17' Wide Half-Street for Phases I & II only

Methodology:

The Developer is required to construct Junco Street as a 24' wide street section (per the Conditions of Approval) as a future Collector Street per the Transportation System Plan. However, the Developer is only providing a 17' wide half-street section, but is providing the additional 2" of overexcavation and baserock needed to comply with the required asphalt pavement section for a Collector Street. Therefore, the difference in the cost between the required 24' wide street section and the provided 17' wide street section, minus the additional cost for the Collector Street oversizing, will be made as a direct payment to the City by the Developer.

Item	Description	Quantity	Unit	Unit Price	Total Price	Proposed Share	Proposed City Cost	Proposed Developer Cost	Comments/Assumptions
Junco Street - Required 24' wide street section									
1	Mobilization/Bond	1	LS	\$ 6,400.00	\$ 6,400.00	0 / 100	\$ -	\$ 6,400.00	Assumed 8% of Cost
2	Clearing	1	LS	\$ 2,500.00	\$ 2,500.00	0 / 100	\$ -	\$ 2,500.00	Allowance, 910' long x 26' wide
3	Excavation/Subgrade Prep	1,310	CY	\$ 6.00	\$ 7,860.00	0 / 100	\$ -	\$ 7,860.00	Assumed, 910' x 26' x 1.5'
4	Baserock	1,420	TON	\$ 16.00	\$ 22,720.00	0 / 100	\$ -	\$ 22,720.00	Assumed, 910' x 26' x 1'
5	Paving	500	TON	\$ 80.00	\$ 40,000.00	0 / 100	\$ -	\$ 40,000.00	Assumed, 910' x 22.5' x 0.33'
	24' Wide Street Total				\$ 79,480.00		\$ -	\$ 79,480.00	24' Wide Street
Junco Street - Provided 17' wide street section									
1	Mobilization/Bond	1	LS	\$ 4,500.00	\$ 4,500.00	0 / 100	\$ -	\$ 4,500.00	Assumed 8% of Cost
2	Clearing	1	LS	\$ 2,000.00	\$ 2,000.00	0 / 100	\$ -	\$ 2,000.00	Allowance, 910' long x 19' wide
3	Excavation/Subgrade Prep	960	CY	\$ 6.00	\$ 5,760.00	0 / 100	\$ -	\$ 5,760.00	Assumed, 910' x 19' x 1.5'
4	Baserock	1,040	TON	\$ 16.00	\$ 16,640.00	0 / 100	\$ -	\$ 16,640.00	Assumed, 910' x 19' x 1'
5	Paving	340	TON	\$ 80.00	\$ 27,200.00	0 / 100	\$ -	\$ 27,200.00	Assumed, 910' x 15.5' x 0.33'
	17' Wide Street Total				\$ 56,100.00		\$ -	\$ 56,100.00	17' Wide Street
Junco Street - Collector Street Oversizing									
1	Excavation - Collector Street	110	CY	\$ 6.00	\$ 660.00	100 / 0	\$ 660.00	\$ -	Assumed, 910' x 19' x 0.17'
2	Baserock - Collector Street	180	TON	\$ 16.00	\$ 2,880.00	100 / 0	\$ 2,880.00	\$ -	Assumed, 910' x 19' x 0.17'
	Collector Street Oversizing Total				\$ 3,540.00		\$ 3,540.00	\$ -	24' Wide Street
Street Total Difference							\$ (19,840.00)	Credit to City by Developer	

Unit costs based on Developer's proposed reimbursement cost estimate provided to the City on March 4, 2013.

Exhibit C - Stormwater **Phillips Subdivision - Qualified Public Improvements**

Methodology:

Phase II stormwater only. The Developer is required to oversize the subdivision's pipe network in Phase II to provide for stormwater runoff for the adjacent parcel of land directly to the east and for Quail Run to the south. The onsite stormwater pipe oversizing will be reimbursed by the City to the Developer.

Item	Description	Quantity	Unit	Unit Price	Total Price	Proposed Share	Proposed City Cost	Proposed Developer Cost	Comments/Assumptions
Phase II Onsite Stormwater									
1	12" to 30" N12 Storm Drain	362	LF	\$ 65.00	\$ 23,530.00	100 / 0	\$ 23,530.00	\$ -	Pipe Oversizing Costs
2	15" to 30" N12 Storm Drain	145	LF	\$ 55.00	\$ 7,975.00	100 / 0	\$ 7,975.00	\$ -	Pipe Oversizing Costs
3	48" to 60" Manhole	2	EA	\$ 1,700.00	\$ 3,400.00	100 / 0	\$ 3,400.00	\$ -	Pipe Oversizing Costs
	Phase II Storm Subtotal				\$ 34,905.00		\$ 34,905.00	\$ -	Onsite Reimbursement
Stormwater Total									
							\$ 34,905.00	Reimbursement to Developer	

Unit costs based on Developer's proposed reimbursement cost estimate provided to the City on March 4, 2013.

Exhibit D

Phillips Subdivision - Additional Plan Sheets

Description

The following revised plan sheets must be prepared and submitted to the City of Stayton in accordance with the Development Agreement

Item	Description
1	Sanitary Sewer Plan & Profile Sheet: Oriole Street including potential lots to be served by private grinder pumps
2	Water Line Plan & Profile Sheet: Junco Avenue
3	Streets Detail Sheet: Junco Avenue Cross-Section
4	Streets Detail Sheet: Junco Avenue Slope Easement Cross-Section
5	Streets Detail Sheet: Junco Avenue Street Plan sheet showing ROW, AC Pavement, Gravel Shoulder and Easements
6	Storm Sewers: Tract A - On-site detention/retention area, outlet structure details and provisions for overflow w/ verification of calculations

REEL: 3512

PAGE: 491

June 13, 2013, 11:35 am.

CONTROL #: 340962

State of Oregon
County of Marion

I hereby certify that the attached
instrument was received and duly
recorded by me in Marion County
records:

FEE: \$ 96.00

BILL BURGESS
COUNTY CLERK

THIS IS NOT AN INVOICE.